

1 ANITA STEBURG (SBN: 245933)
2 STEBURG LAW FIRM
3 1798 Technology Drive, Suite 258
4 San Jose, CA 95110
5 Tel.: (408) 573-1122
6 Fax: (408) 573-1126

7 Attorney for Debtors
8 TIMOTHY O. AVERY AND JULIE S. SCOPAZZI

9 UNITED STATES BANKRUPTCY COURT
10
11 NORTHERN DISTRICT OF CALIFORNIA (SAN JOSE)

12 In re:

13 TIMOTHY O. AVERY AND JULIE S.
14 SCOPAZZI,

15 Debtors.

16 CHAPTER 13

17 Bankruptcy Case No. 11-52363 SLJ

18 **MOTION TO AVOID JUDICIAL**
19 **LIEN IMPAIRING DEBTORS'**
20 **EXEMPTIONS**

21 Date: none set

22 Time: none set

23 Location: none set

24 Judge: Hon. Stephen L. Johnson

25
26 TIMOTHY O. AVERY AND JULIE S. SCOPAZZI, Debtors herein, respectfully
27 represent:

28 1. The case was commenced by the filing of a Voluntary Petition for relief under
Chapter 13 of the Bankruptcy Code on March 12, 2011. Devin Durham-Burk was appointed
Chapter 13 Trustee.

2. This Motion is brought pursuant to 11 U.S.C. §522(f)(1) and Fed. R. Bankr. P.
4003(d) to avoid a judicial lien against the Debtors' residence.

3. Among the assets of the bankruptcy estate was the Debtors' residence located at
23000 Mountain Charlie Road, Los Gatos, California (the "Property").

4. The following Abstract of Judgment was recorded against Debtors' Property and
constitutes a judicial lien thereon: On February 3, 2011, FIA Card Services, N.A. recorded an

1 Abstract of Judgment in the amount of \$44,109.90 with the Santa Clara County Recorder, as
2 document number 21072217 of the official records. A copy of the Abstract of Judgment is
3 attached to Debtors' Declaration In Support of Motion to Avoid Judicial Lien Impairing
4 Debtors' Exemptions, marked as Exhibit "A", and is incorporated herein by reference.

5
6 5. On the date that the Debtors filed their Chapter 13 Petition, the Debtor's
7 Property had a fair market value of \$740,000.00. Attached as Exhibit "B" to Debtors' declaration
8 is a copy of the Schedule A - Real Property filed by the Debtors and is incorporated herein by
9 reference.

10 6. In addition to the lien recorded by FIA Card Services, N.A, on the date that the
11 Debtors filed their Chapter 13 Petition, the Property was encumbered by the following liens, as
12 described in the Schedule D - Creditors Holding Secured Claims filed by the Debtors, a copy of
13 which is attached as Exhibit "C" to Debtor's declaration and is incorporated herein by reference:

14 a. First deed of trust by Bayview Home Loans in the amount of
15 \$632,000.00.

16 b. Second deed of trust by Wells Fargo Home Loans in the amount of
17 \$129,588.00.

18 7. The existence of the judicial lien as recorded by FIA Card Services, N.A impairs
19 exemptions to which the Debtors would have been entitled under 11 U.S.C. §522(b), in that the
20 Debtors claimed an exemption on their residence pursuant to California Code of Civil Procedure
21 section 703.140(b)(5), as shown on Schedule C - Property Claimed as Exempt - Amended,
22 attached as Exhibit "D" to Debtors' declaration and incorporated herein by reference.

23 8. Under California Code of Civil Procedure section 703.140(b)(5), the Debtors are
24 entitled to a "wild card" exemption in the amount of \$23,250.00. In the present case, Debtors
25 claimed an exemption under California Code of Civil Procedure section 703.140(b)(5) of \$1.00 on
26 their residence.

27 9. After subtracting the total value of first and second deeds of trust from the value of
28 the Property, there remains no equity in the Property.

1
2 10. Therefore, the facts establish that the Abstract Judgment held by FIA Card
3 Services, N.A. impairs the Debtors' exemption and is voidable as against the Property.

4 WHEREFORE, Debtors pray for an order:

5 1. That this Court enter an Order, pursuant to Bankruptcy Code section 522(f), for the
6 cancellation and avoidance of the Abstract of Judgment recorded by FIA Card Services, N.A.
7 against the Property; and

8 2. For such other and further relief as may be just.

9 Dated: May 5, 2011

10 Respectfully Submitted,

11
12 /s/ Anita L. Steburg
13 ANITA L. STEBURG
14 Attorney for Debtors
15
16
17
18
19
20
21
22
23
24
25
26
27
28